

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 291 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KAMLABEN R PANCHAL

Versus

NAZIR

Appearance:

MR VIJAYSINH SOLANKI for Petitioner
NOTICE SERVED for Respondent No. 1
SERVED BY AFFIX.(N) for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The land lady has filed this Revision under Section 29(2) of the Bombay Rent Act against the order dated 8.9.1991.

2. Brief facts are that the land lady filed a Suit for eviction of the tenant. The trial Court dismissed the Suit. The land lady preferred an Appeal against the Judgment and Decree of the trial Court. During pendency of the Appeal the respondent tenant died leaving behind him no heir or legal representative. Consequently an application was given by the land lady that the Appeal may be heard and decided on merits in the absence of the respondent and possession may be delivered to her. This Application was rejected by the lower Appellate Court, hence this Revision.

3. In the impugned order the lower Appellate Court has appointed Nazir of the Court to represent the estate of the deceased for the purposes of Appeal and the Appellant was directed to deposit Rs.1500/- towards cost to enable the Nazir to engage Advocate to defend the Appeal on behalf of the respondent.

4. In this revision the Nazir of the Court of Small Causes Court, Ahmedabad and Shri C.U.Shelat, Advocate, representing the tenant - respondent in the Appeal have been arrayed as respondents. They are not present. Consequently Shri Vijaysinh Solanki, learned Counsel for the revisionist was heard.

5. The only short point for consideration in this revision is whether the impugned order is legal and in accordance with Order - 22, Rule : 4-A of the Code of Civil Procedure. Order : 22, Rule : 4-A provides that if in any Suit it shall appear to the Court that any party who has died during the pendency of the Suit has no legal representative, the Court may, on the application of any party to the Suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the Suit and any judgment or orders subsequently given or made in the Suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the Suit.

6. The Appeal is a continuation of the Suit and as

such the provisions of Order : 22, Rule : 4-A C.P.C. will equally apply to Appeals. What is provided in Order : 22, Rule : 4-A in short is that if during pendency of the Suit or Appeal any party dies leaving behind no legal representative the Court is given discretion either to proceed in the absence of a person representing the estate of the deceased or the Court may order appointment of Administrator General or an officer of the Court or any such other person as it thinks fit to represent the estate of the deceased. Thus, apparently two discretions are given under Order : 22, Rule : 4-A of the C.P.C. The first discretion is that the Court in such situation where a party dies leaving behind no legal representative may proceed to decide the Suit or Appeal in absence of such person consequent upon his death. The other discretion provided under this Rule is that the Court may appoint Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased. Sub-rule 2 of Rule : 4-A further provides that before making an order under this Rule the Court may require notice of the Application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit.

7. In the impugned order the lower Appellate Court has admitted that two discretions are given to the Appellate Court in such situation. However, over looking the facts and circumstances of the case the lower Appellate Court thought it proper to appoint Nazir of the Small Causes Court, Ahmedabad, to represent the estate of the deceased. In doing so compliance of sub-rule 2 of Rule : 4-A was not at all made by the lower Appellate Court inasmuch as no notice of the application given by the appellant was given to any person or affixed on the property to enable any person claiming interest in the estate of the deceased to come forward and make his claim. Thus, without such notice order for appointment of Nazir to represent the estate of the deceased is contrary to law.

8. On the factual side it is clear that the Suit was filed by the land lady - revisionist for eviction of the tenant respondent. It is undisputed that the tenant respondent expired during the pendency of the Appeal leaving behind no heir or the legal representative to represent his estate. Shri C.U.Shelat, who was engaged as Counsel by the respondent - tenant filed an Affidavit in this Court on 12.3.1992 in which he admitted that the tenant - respondent expired leaving behind no legal representative. He also considered the pathetic

condition of the land lady and requested that possession of demised premises be given to the land-lady. This Affidavit has been considered by me. Since it was not in dispute that the tenant expired leaving behind no legal representative or heir and which fact was not controverted before the lower Appellate Court, in my opinion the lower Appellate Court committed patent illegality in exercising the second discretion and not the first discretion of proceeding to decide the Appeal on merits in the absence of the respondent tenant, since dead. The discretion, to my mind, was arbitrarily exercised. The lower Appellate Court should have taken into consideration the fact that it was the tenant respondent who was in possession of the Suit premises. Nobody else came forward to assert any right or tenancy right in the demised premises. It is informed in the course of argument in this revision that the Suit premises, after the death of the respondent tenant, has been occupied illegally by the out-sider who has committed tress-passed therein. In such circumstances appointment of the Nazir as an officer of the Court to represent the estate of the deceased tenant at the cost and expense of the land-lady, to my mind, is wholly illegal and unwarranted. The order under revision, in these circumstances, cannot be legally sustained.

9. The revision has, therefore, to be allowed and is hereby allowed. The impugned order is set aside. Civil Appeal No.170 of 1982 is remanded to the lower Appellate Court with direction to the lower Appellate Court that it shall hear and decide the same on merits after hearing the argument of the Advocate representing the land lady appellant and the deceased - tenant in accordance with law. The Appeal may be disposed of expeditiously within a period of four months from today. No order as to costs.

sd/-

Date : October 06, 2000 (D. C. Srivastava, J.)

sas